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19 **UNITED STATES DISTRICT COURT**

20 **DISTRICT OF NEVADA**

21 HIGH SEC LABS LTD.,

22 Plaintiff,

23 v.

24 IPGARD INC., and  
25 SMARTAVI INC.,

26 Defendants.

Case No. 2:20-cv-01797-MMD-NJK

**STIPULATED ~~PROPOSED~~**  
**PROTECTIVE ORDER**

27 IT IS HEREBY STIPULATED AND AGREED, pursuant to Rule 26(c) of the Federal  
28 Rules of Civil Procedure and subject to the approval of the Court, by and between the parties  
and by their respective undersigned counsel, that this Stipulated Protective Order shall govern  
the handling of documents, depositions, deposition exhibits, interrogatory responses,  
admissions, and any other information produced, given, or exchanged by and among the  
Parties and any non- parties in the above-captioned action.

1 To expedite the flow of discovery material, to facilitate the prompt resolution of  
2 disputes over confidentiality of discovery materials, to adequately protect information the  
3 Parties are entitled to keep confidential, to ensure that only materials the parties are entitled  
4 to keep confidential are subject to such treatment, and to ensure that the Parties are permitted  
5 reasonably necessary uses of such materials in preparation for and in the conduct of trial,  
6 pursuant to Fed. R. Civ. P. 26(c), IT IS HEREBY STIPULATED AND AGREED as follows:  
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## **DEFINITIONS**

1. “Party”: any party to this action, including all of its officers, directors, employees, consultants, retained experts and consultants, and outside counsel (and their support staff).

2. “Material”: all information, documents, items, and things produced, served, or otherwise provided in this action (whether paper, electronic, tangible or otherwise) by the parties or by non-parties.

3. “Producing Party”: a Party or non-party that produces Material in this action, or in any related action.

4. “Receiving Party”: a Party that receives Material from a Producing Party or from a Designating Party.

5. “Designating Party”: a Party or non-party that designates Material as “CONFIDENTIAL,” “OUTSIDE COUNSEL EYES ONLY,” or “OUTSIDE COUNSEL RESTRICTED – SOURCE CODE.”

6. “Source Code”: Extremely sensitive OUTSIDE COUNSEL EYES’ ONLY CONFIDENTIAL Material representing computer code and associated comments and revision histories, disclosure of which to another Party or non-party would create a substantial risk of serious harm that could not be avoided by less restrictive means. By way of example, “Source Code” subject to this paragraph may include RTL, HDL, microcode, and similarly sensitive design information.

7. “CONFIDENTIAL Material”: Material that the Designating Party believes in good faith is not generally known to others, and that the Designating Party (i) would not normally reveal to third parties except in confidence or has undertaken with others to maintain in confidence, or (ii) believes in good faith is protected by a right to privacy under federal or

1 state law or any other applicable privilege or right related to confidentiality or privacy.  
2 Copies, abstracts, compilations, summaries, and extracts of Materials designated as  
3 CONFIDENTIAL will also be treated as CONFIDENTIAL Material. For the avoidance of  
4 doubt, nothing in this Order shall require production of documents, information or other  
5 material that would otherwise fall within the definition of CONFIDENTIAL Material, but  
6 which a Party contends is protected from disclosure by the attorney-client privilege, the work  
7 product doctrine, or other privilege, doctrine, or immunity.  
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9 8. "OUTSIDE COUNSEL EYES' ONLY Material": Material that the Designating  
10 Party believes in good faith is not generally known to others and has significant competitive  
11 value such that unrestricted disclosure to others would create a substantial risk of serious  
12 injury and that the Designating Party (i) would not normally reveal to third parties except in  
13 confidence or has undertaken with others to maintain in confidence, or (ii) believes in good  
14 faith is protected by a right to privacy under federal or state law or any other applicable  
15 privilege or right related to confidentiality or privacy. The designation is reserved for  
16 information that constitutes proprietary financial, technical, competitive, or commercially  
17 sensitive information that the Designating Party maintains as highly confidential in its  
18 business, including but not limited to information relating to future products, strategic plans,  
19 non-public financial data, documents that would reveal trade secrets, licensing documents  
20 or licensing communications, and settlement agreements or settlement communications, the  
21 disclosure of which is likely to cause harm to the competitive position of the Designating  
22 Party. This designation also includes Material obtained from a non-party pursuant to a  
23 Nondisclosure Agreement ("NDA"), unless the non-party permits a different designation in  
24 writing. Copies, abstracts, compilations, summaries, and extracts of Materials designated as  
25 OUTSIDE COUNSEL EYES ONLY will also be treated as OUTSIDE COUNSEL Material.  
26 For the avoidance of doubt, nothing in this Order shall require production of documents,  
27 information or other material that would otherwise fall within the definition of OUTSIDE  
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1 COUNSEL EYES ONLY Material, but which a Party contends is protected from disclosure  
2 by the attorney-client privilege, the work product doctrine, or other privilege, doctrine, or  
3 immunity.

4 9. “OUTSIDE COUNSEL RESTRICTED – SOURCE CODE Material”:  
5 Source Code and copies, abstracts, compilations, summaries, and extracts of Source Code.

6 10. “Designated Material”: Material that is designated  
7 “CONFIDENTIAL,” “OUTSIDE COUNSEL EYES ONLY,” or “OUTSIDE COUNSEL  
8 RESTRICTED – SOURCE CODE” and all copies, abstracts, compilations, summaries, and  
9 extracts of such Material.

10 11. “Counsel of Record”: (i) Outside counsel who appear on the pleadings as counsel  
11 for a Party, and (ii) partners, associates, and employees of such outside counsel to whom it is  
12 reasonably necessary to disclose the information for this litigation, including supporting personnel  
13 employed by the attorneys, such as paralegals, legal translators, legal secretaries, legal clerks, and  
14 shorthand reporters. “Counsel of Record” does not include any person who is an employee,  
15 director, or officer of a Party or a Party’s affiliates even if that person appears on the pleadings as  
16 counsel for a Party.

17 12. “Outside Consultant”: a person with specialized knowledge or experience in a  
18 matter pertinent to the action who has been retained by a Party or its Counsel of Record to serve  
19 as a testifying expert witness in this action required to be disclosed pursuant to Federal Rule  
20 26(a)(2)(B) and who is not a current or anticipated: (i) officer, director, or employee of a Party  
21 or of a Party’s competitor, or (ii) consultant involved in product and/or process design or  
22 development for a Party or for a Party’s competitor.

23 13. “Non-testifying Consultant”: a person retained or specially employed by another  
24 party in anticipation of litigation or to prepare for trial and who is not expected to be called as  
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1 a witness pursuant to Federal Rule 26(a)(2)(B) and 26(b)(4)(D). There shall be a limit of five  
2 Non-testifying Consultants.

3 14. “Professional Vendors”: persons or entities unaffiliated with a Party or a  
4 competitor of a Party that provide litigation support services (e.g., photocopying, videotaping,  
5 translating, preparing transcripts, exhibits, or demonstrations, organizing or processing data)  
6 and their employees and subcontractors. This definition includes a professional jury or trial  
7 consultant retained in connection with this action and mock jurors retained by such a consultant  
8 to assist them in their work. Professional Vendors do not include consultants who fall within  
9 the definition of Outside Consultant.  
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#### 11 SCOPE

12 15. Compliance with Applicable Rules Governing Confidentiality. This Order does  
13 not confer blanket protections on all disclosures or responses to discovery, and the protection  
14 it affords from public disclosure and use extends only to the limited information or items that  
15 are entitled to confidential treatment under applicable legal principles or as otherwise  
16 defined herein as Designated Material.  
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#### 18 ACCESS TO DESIGNATED MATERIAL

19 16. Access to CONFIDENTIAL Material. Only the following persons are  
20 permitted to have access to CONFIDENTIAL Material:

- 21 (a) Up to two (2) employees of the Receiving Party to whom disclosure is  
22 reasonably necessary for the management, supervision, or oversight of  
23 this litigation and who have signed the “Agreement to Be Bound by  
24 Protective Order” attached as Exhibit A;
- 25 (b) persons who appear on the face of Designated Material as an author,  
26 addressee or recipient thereof, and any other party who had previously  
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1                   seen the document prior to this litigation, assuming such party is subject  
2                   to the protections of whichever Protective Order such information was  
3                   disclosed under and/or subject to this Protective Order;

4                   (c)     Counsel of Record;

5                   (d)     Outside Consultants and Non-Testifying Consultants, subject to the  
6                   procedures set forth in paragraphs 21-22;

7                   (e)     the Court and its personnel;

8                   (f)     court reporters;

9                   (g)     a mediator engaged or assigned to mediate this matter, and his or her  
10                  staff, who have signed the “Acknowledgment and Agreement to be  
11                  Bound by Protective Order” attached as Exhibit A and the “Certification  
12                  of Outside Consultant” attached as Exhibit B; and

13                  (h)     Professional Vendors to which disclosure is reasonably necessary for  
14                  this litigation and a representative of which has signed the  
15                  “Acknowledgment and Agreement to be Bound by Protective Order”  
16                  attached as Exhibit A.

17                  17. Access to OUTSIDE COUNSEL EYES ONLY Material. Only the persons  
18                  identified in Paragraph 16(b)-(h) are permitted to have access to OUTSIDE COUNSEL  
19                  EYES ONLY Material.

20                  18. Access to OUTSIDE COUNSEL RESTRICTED – SOURCE CODE Material.  
21                  Only the persons identified in Paragraph 16(b)-(h) are permitted to have access to OUTSIDE  
22                  COUNSEL RESTRICTED – SOURCE CODE Material. For the avoidance of doubt, other  
23                  than persons identified in (b), (c), (e), (f) and (g)—all other persons who have access to  
24                  Source Code must complete the “Acknowledgment and Agreement to be Bound by  
25                  Source Code must complete the “Acknowledgment and Agreement to be Bound by  
26                  Source Code must complete the “Acknowledgment and Agreement to be Bound by  
27                  Source Code must complete the “Acknowledgment and Agreement to be Bound by  
28                  Source Code must complete the “Acknowledgment and Agreement to be Bound by

1 Protective Order” attached as Exhibit B, and must provide the producing party a copy of  
2 that agreement 10 days prior to giving access to that material to that person. Any dispute  
3 about allowing access to the Source Code shall be resolved according to paragraphs 23 and  
4 46. The parties agree that, subject to the Federal Rules of Civil Procedure, non-testifying,  
5 consulting experts disclosed pursuant to this order are not subject to discovery in this  
6 litigation. In the event that paragraph 3 of Exhibit B is triggered (i.e., a consultant becomes  
7 an employee), counsel shall notify opposing counsel within 5 business days of being  
8 informed that the consultant has accepted a position elsewhere.  
9

10 19. Acknowledgments to Be Bound. Each person to whom Designated Material  
11 may be disclosed and who is required to sign the “Acknowledgment and Agreement to Be  
12 Bound by Protective Order” (Exhibit A) and/or the “Certification of Outside Consultant”  
13 (Exhibit B) must do so prior to reviewing Designated Material. Counsel of Record for the  
14 Receiving Party must retain each original executed document and, on written request, must  
15 provide copies to Counsel of Record for all other Parties after the termination of this action.  
16 The identification of an individual pursuant to this Order does not make that individual  
17 subject to deposition or any other form of discovery.  
18

### 19 DISCLOSURE TO EMPLOYEES

20 20. Notice for Section 16(a) Employee. Before disclosing another party’s  
21 Designated Material to an employee under Section 16(a), a Receiving Party must provide  
22 written notice to Counsel of Record (or outside counsel for a non-Party) for the Designating  
23 Party seven (7) days before providing that person access to the Confidential Information,  
24 and give the Producing Party an opportunity to object. The notice must include for the  
25 employee: name, business title, business address, and business or profession, and a signed  
26 copy of the Acknowledgment and Agreement to Be Bound by Protective Order attached as  
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1 Exhibit A.

2 **DISCLOSURE TO CONSULTANTS**

3 21. Notice for Outside Consultant. Before disclosing another party's Designated  
 4 Material to an Outside Consultant, a Receiving Party must first provide written notice by  
 5 hand-delivery or email to Counsel of Record (or outside counsel for a non-Party) for the  
 6 Designating Party. The notice must include: (a) the Outside Consultant's name, business  
 7 title, business address, and business or profession; (b) a current CV; (c) the Outside  
 8 Consultant's previous or current relationship (personal or professional) with any of the  
 9 Parties and/or the Designating Party, their predecessors, or their successors in interest; (d) a  
 10 list of cases in which the Outside Consultant has testified (at trial or deposition) within the  
 11 last four (4) years; (e) a list of all companies for which the Outside Consultant has consulted  
 12 or that have employed the Outside Consultant, including in connection with a litigation,  
 13 within the last four (4) years; and (f) a signed copy of the Acknowledgment and Agreement  
 14 to Be Bound by Protective Order attached as Exhibit A and the "Certification of Outside  
 15 Consultant" attached as Exhibit B.

16 22. Non-Testifying Consultants. Prior to receiving Designated Material, a Non-  
 17 Testifying Consultant must provide a signed copy of the Acknowledgment and Agreement  
 18 to Be Bound by Protective Order attached as Exhibit A. Other than persons with access to  
 19 Source Code, pursuant to Federal Rule 26(b)(4)(D), a Non-Testifying Consultant need not  
 20 be disclosed, nor may a party obtain facts known or opinions held by a Non-Testifying  
 21 Consultant absent exceptional circumstances. For the avoidance of doubt, a Non-Testifying  
 22 Consultant who a party plans to give access to an adversary's Source Code, must be  
 23 identified at least seven (7) days prior to having access to the code, and the Party Producing  
 24 the code must be given an opportunity to object as set forth in paragraph 23. Pursuant to the  
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1 Federal Rules of Civil Procedure, that Non-Testifying Consultant may not be deposed, nor  
 2 may an adverse party obtain facts known or opinions held by him or her.

3 23. Objections. The Designating Party will have seven (7) calendar days from  
 4 receipt of the notice to object to the disclosure. The objection must identify the grounds for  
 5 the objection. If the Designating Party does not object during that seven (7) day period, then  
 6 the Receiving Party may disclose Designated Material to the Outside Consultant, and Non-  
 7 Testifying Consultant pursuant to the terms of this Order. However, if the Designating Party  
 8 objects within that period, the Receiving Party may not disclose Designated Material to the  
 9 challenged individual absent resolution of the dispute or order of an appropriate court.  
 10

11 24. Judicial Intervention. If an objection is made, the parties shall meet and confer  
 12 within seven (7) calendar days of such objection to try to resolve the dispute by agreement.  
 13 If no agreement is reached, the Party wishing to prevent the disclosure may, within seven  
 14 (7) calendar days following the conclusion of the initial seven (7) calendar day meet and  
 15 confer period, move the Court for an order that the designated individual be prohibited from  
 16 accessing CONFIDENTIAL, OUTSIDE COUNSEL EYES ONLY, or OUTSIDE  
 17 COUNSEL RESTRICTED – SOURCE CODE Material, or other appropriate relief using  
 18 the discovery dispute procedure as outlined by the Court. No disclosure of any such  
 19 Designated Material shall be made by the Receiving Party to the Outside Consultant that is  
 20 the subject of the Designating Party's motion during this second seven (7) day period. If  
 21 the Designating Party so moves the Court, no disclosure of any such Designated Material  
 22 shall be made by the Receiving Party to the Outside Consultant that is the subject of the  
 23 Designating Party's motion until the Court rules on the Designating Party's motion.  
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## 26 **INSPECTION AND PRODUCTION OF SOURCE CODE**

27 25. The Secure Room. A Party's Source Code will be made available for inspection  
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1 in a secure room in computer searchable format on a stand-alone computer connected to a  
2 printer (that is, a computer that is not connected to a network or the Internet and that is  
3 locked down so that additional peripheral devices cannot be connected to it) during regular  
4 business hours on reasonable notice, at a location in the United States selected by the  
5 Producing Party (the “Secure Room”). The parties’ preference is that the Secure Room be  
6 at Producing Party’s counsel’s office. However, given logistical and other difficulties  
7 related to travel and other restrictions caused by the COVID-19 crisis, the parties agree that  
8 in the event travel to the Producing Party’s counsel’s office is not feasible, the Producing  
9 Party will make the Source Code available at another location not subject to travel  
10 restrictions or other restrictions related to the COVID-19 crisis subject to the same Secure  
11 Room protections and other source code protections identified herein. In the event that is  
12 not feasible, the Source Code may be made available for inspection at the Receiving Party’s  
13 counsel’s offices subject to the same Secure Room restrictions identified herein. To the  
14 extent the Parties cannot agree on the location or the means for producing Source Code, any  
15 dispute will be submitted to the Court for resolution via telephonic hearing in accordance  
16 with the provisions of the Scheduling Order governing this litigation. To the extent Source  
17 Code is made available at the Producing Party’s counsel’s office and review there is feasible,  
18 the stand-alone computer shall include software utilities which will allow counsel and  
19 experts to view and search the Source Code. At a minimum, these utilities must provide the  
20 ability to view, search, and line-number any source file. Before being admitted into the  
21 Secure Room, an individual must provide a photo identification card issued by the  
22 government of a state of the United States or by the national government of the individual’s  
23 current citizenship.

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27 26. Review of Source Code. No electronic devices are permitted in the Secure  
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1 Room, including laptops, floppy drives, zip drives, cellular telephones, personal digital  
2 assistants, cameras, voice recorders, telephone jacks, or other hardware. Non-electronic  
3 devices capable of similar functionality are also prohibited, as is loose paper that could be  
4 used in a printer. Written notes relating to the Source Code may be taken only in spiral or  
5 permanently-bound notebooks. The Source Code may not be copied into the notes.  
6 Notwithstanding this provision, file name and location (*i.e.*, directory path) information may  
7 be copied into the notes. The Producing Party may visually monitor the activities of the  
8 Receiving Party's representatives during any review, but only to ensure compliance with  
9 this Order. The person performing such monitoring shall not record activity taking place in  
10 the Secure Room, and shall not report on any activities taking place in the Secure Room,  
11 other than as may be required to ensure compliance with this Order. The Producing Party  
12 shall provide a manifest of the contents of the computer to include a list of Source Code files  
13 available for review to the extent practicable.  
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16 27. Printing Portions of the Source Code. A Receiving Party may print paper copies  
17 of necessary, specific portions of the Source Code at the time of inspection. Paper copies  
18 are restricted to what is necessary for use in a filing, in an expert report, at a deposition, or  
19 at a hearing. A Receiving Party must not print passages to facilitate review of the Source  
20 Code away from the Secure Room; the Source Code is to be reviewed and analyzed in the  
21 Secure Room using the stand-alone computer. The Receiving Party is prohibited from  
22 removing the paper copies from the Secure Room.  
23

24 28. Production of Printouts. The Producing Party will collect any printed pages of  
25 the Source Code and Bates number, copy, and label them "OUTSIDE COUNSEL  
26 RESTRICTED – SOURCE CODE," with consecutive Bates numbers. Within seven (7)  
27 calendar days, the Producing Party must either  
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- 1 (a) produce one (1) copy set of such pages to one or more offices of the  
2 Receiving Party's Counsel of Record, or
- 3 (b) provide notice that the printed portions are excessive or were not  
4 requested for a permitted purpose. A reasonable request will be  
5 presumed to extend for no more than seven (7) contiguous pages and for  
6 no more than 100 total printed pages for any one product (or, to the  
7 extent that multiple products share the same set of code, these limits will  
8 apply to that code set). These limits may be increased by agreement of  
9 the Parties or on a showing of need to the Court.  
10

11 29. Maintenance of Printouts. The copy set of the Source Code must be kept at all  
12 times in the office(s) of Counsel of Record to which the Producing Party produced them.  
13 The copy sets must be kept in a locked storage container, which may include a locked desk  
14 drawer, where they will not be accessible to persons other than those allowed access under  
15 this Order. When transmitting any copies of printouts of Source Code from the Secure  
16 Room to other locations for review by those permitted by this Order to review Source Code,  
17 the transmitting individual must maintain the Source Code on their person at all times during  
18 transmission and shall not, for example, place the Source Code in checked luggage during  
19 travel. Except as explicitly permitted below, the Receiving Party is prohibited from making  
20 additional copies or scanning the printouts. Outside Consultants and experts may keep a  
21 single copy of excerpts of the Source Code that are reasonably necessary for purposes of  
22 preparing expert reports. The excerpts of Source Code must be kept according to the same  
23 standards of care that are otherwise identified in this Paragraph for protecting Source Code  
24 (e.g., locked storage container, hand carry, and not placed in checked luggage during travel).  
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27 30. Receiving Party Log. The Receiving Party must maintain a log identifying each  
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1 person who reviews the printouts and state the date on which such person first reviewed the  
 2 printouts. The Receiving Party must provide the Producing Party with a copy of the log on  
 3 two (2) business days' notice, but no more than once per month absent a showing of good  
 4 cause.

5 31. Use at Depositions and Hearings. A Receiving Party is prohibited from making  
 6 copies of Source Code for use at a deposition or at a hearing without the Producing Party's  
 7 prior written consent. If a Receiving Party intends to use Source Code at a deposition or  
 8 hearing, such party must provide the Producing Party with five (5) calendar days' advance  
 9 notice of its intent to use such Source Code, in which case the Producing Party will make  
 10 paper copies available for use at the deposition. However, if the deposition witness already  
 11 had access to the Source Code, either by viewing it, acting as an expert for the party whose  
 12 code is to be used in the deposition (e.g., HSL's expert can be examined about HSL's code),  
 13 or having signed an undertaking pursuant to this Protective Order, no notice is required  
 14 under this paragraph.  
 15

16 32. Use in Filings. A Receiving Party may include excerpts of Source Code in court  
 17 filings if reasonably necessary, provided any filings containing Source Code excerpts must  
 18 be designated "OUTSIDE COUNSEL RESTRICTED – SOURCE CODE," treated as  
 19 Source Code pursuant to this Order, and filed under seal pursuant to the Local Rules and  
 20 Procedures of the District of Nevada, using a slip sheet indicating the removal of the sealed  
 21 materials in any service copies. Outside Consultants may keep a single copy of court filings  
 22 that contain Source Code excerpts, but only to the extent reasonably necessary and for the  
 23 sole purpose of rendering their services, and shall destroy all copies at the conclusion of this  
 24 litigation.  
 25

26 33. Use in Expert Reports and Discovery Responses. A Receiving Party may  
 27  
 28

See order issued  
 concurrently herewith

1 include excerpts of Source Code in expert reports and discovery responses to the extent  
 2 reasonably necessary, provided that any expert reports or discovery responses containing  
 3 Source Code excerpts must be designated “OUTSIDE COUNSEL RESTRICTED –  
 4 SOURCE CODE” and treated as Source Code pursuant to this Order. Outside Consultants  
 5 may keep a single copy of expert reports and discovery responses that contain Source Code  
 6 excerpts, but only to the extent reasonably necessary and for the sole purpose of rendering  
 7 their services, and shall destroy all copies at the conclusion of this litigation.  
 8

9 34. Source Code Review During COVID-19 Pandemic. The Parties will work  
 10 collaboratively to identify and implement temporary procedures that will enable the  
 11 receiving party’s authorized personnel (e.g., outside counsel and experts) to review source  
 12 code during the pandemic without the need for travel or in person code review. The use of  
 13 temporary source code review procedures during the pandemic will not be citable as  
 14 evidence of appropriate code-review procedures after the pandemic in any pending actions  
 15 between the Parties or other related litigation. Once the pandemic has subsided, and as  
 16 agreed upon by the Parties, source code production can return to normal security protocols.  
 17

#### 18 **USE OF DESIGNATED MATERIAL**

19 35. Use of Designated Material by a Receiving Party. A Receiving Party is  
 20 permitted to use Designated Material only in this action.  
 21

22 36. Use of Designated Material by a Producing Party. Nothing in this Order  
 23 restricts a Producing Party’s or Designating Party’s use or disclosure of its own Designated  
 24 Material.  
 25

26 37. Use of Designated Material at Depositions. A Receiving Party can examine  
 27 (a) a witness about Designated Material of which the witness had prior knowledge and (b)  
 28 current directors, officers, employees, designated Rule 30(b)(6) witnesses, and Outside

1 Consultants of a Producing Party or Designating Party about any Designated Material of  
 2 that Producing Party or Designating Party. A non-Party may be examined about documents  
 3 containing Designated Material that appear on their face or from other documents or  
 4 testimony to have been received from or delivered to the non-Party. Any person not  
 5 permitted to have access to Designated Material that is disclosed at a deposition will be  
 6 excluded from the portion of the deposition relating to that information.  
 7

8 38. Use of Designated Material in Court. Before disclosing Designated Material of  
 9 another Party in an open courtroom at trial or other court hearings, the Party seeking to use  
 10 the Designated Material must provide notice to the Designating Party so that the Designating  
 11 Party or Producing Party has a reasonable opportunity to take appropriate action to prevent  
 12 or limit disclosure of the Designated Material in the open courtroom, such as by asking for  
 13 the courtroom to be sealed or for the transcript or any demonstratives to be designated  
 14 confidential. The Parties agree that the use of Designated Material at trial or in other court  
 15 hearings shall not constitute a waiver of or operate in prejudice to any claim of  
 16 confidentiality in the Designated Material.  
 17

18 39. Filing Designated Material. ~~Absent written permission from the Designating~~  
 19 ~~Party or a Court Order issued after appropriate notice, a Party must file Designated Material~~  
 20 ~~under seal pursuant to the Local Rules and Procedures of the District of Nevada. If any~~  
 21 ~~person fails to file Designated Material under seal, the Producing Party, Designating Party,~~  
 22 ~~any Party claiming confidentiality for the Material may request that the Court place the~~  
 23 ~~filing under seal pursuant to the Local Rules and Procedures of the District of Nevada. Prior~~  
 24 ~~to the filing of any redacted version of the sealed filing, the filing Party must provide its~~  
 25 ~~proposed redactions to the Designating Party so that the Designating Party has a reasonable~~  
 26 ~~opportunity to review the proposed redactions and provide consent to the redacted filing.~~  
 27  
 28

See order issued  
 concurrently herewith



1           40. Transmittal of Designated Material. OUTSIDE COUNSEL EYES ONLY and  
2 OUTSIDE COUNSEL RESTRICTED – SOURCE CODE Material may only be transmitted  
3 or transported as set forth below

4           (a) OUTSIDE COUNSEL RESTRICTED – SOURCE CODE Material may  
5 only be transported between or among qualified recipients (including for  
6 depositions) by hand delivery. OUTSIDE COUNSEL RESTRICTED -  
7 SOURCE CODE Material may only be transported outside of the United  
8 States for use in depositions, in which case it must remain under the  
9 continuous control of the Receiving Party while outside of the United  
10 States, and be returned to the United States as soon as is reasonably  
11 practicable following the deposition.  
12

13           (b) OUTSIDE COUNSEL EYES ONLY Material may only be transported:  
14 (i) by hand delivery; (ii) in sealed envelopes or containers via mail or an  
15 established overnight, freight, delivery, or messenger service; or (iii) by  
16 telephone, facsimile, or other electronic transmission system, including  
17 email, where, under the circumstances, there is no reasonable likelihood  
18 that the transmission will be intercepted or misused by any person who  
19 is not a qualified recipient. If OUTSIDE COUNSEL EYES ONLY  
20 Material is transported outside of the United States, it must remain under  
21 the continuous control of the Receiving Party and be returned to the  
22 United States as soon as is reasonably practicable.  
23  
24

25           41. Unauthorized Use or Disclosure. If a Receiving Party learns of the disclosure  
26 or use of Designated Material in any circumstance not authorized by this Order, it must  
27 promptly notify in writing the Designating Party of the unauthorized use or disclosure. In  
28

1 the event of unauthorized disclosure, the Receiving Party must also promptly (a) use its best  
2 efforts to retrieve all copies of the Designated Material, (b) inform the person to whom  
3 unauthorized disclosures were made of the terms of this Order, and (c) ask that person to  
4 execute the “Acknowledgment and Agreement to be Bound by Protective Order” that is  
5 attached as Exhibit A.  
6

#### 7 **PROCEDURE FOR DESIGNATING MATERIALS**

8 42. Designating Documents. For Material in documentary form (other than  
9 transcripts or documents produced natively), the Designating Party must affix the legend  
10 “CONFIDENTIAL,” “OUTSIDE COUNSEL EYES ONLY,” or “OUTSIDE COUNSEL  
11 RESTRICTED – SOURCE CODE” on each page that contains Designated Material.  
12

13 43. Designating Other Material. For non-documentary Material, the Designating  
14 Party must affix in a prominent place on the exterior of the container or containers in which  
15 the information or thing is stored the legend “CONFIDENTIAL,” “OUTSIDE COUNSEL  
16 EYES ONLY,” or “OUTSIDE COUNSEL RESTRICTED – SOURCE CODE.” For any  
17 documents produced natively, the file name may be modified to indicate the appropriate  
18 designation.  
19

20 44. Testimony and Transcripts. For testimony given in deposition or in other  
21 pretrial or trial proceedings, the Designating Party will specify any portions of the testimony  
22 that it wishes to designate as “CONFIDENTIAL,” “OUTSIDE COUNSEL EYES ONLY,”  
23 or “OUTSIDE COUNSEL RESTRICTED – SOURCE CODE.” In the case of depositions,  
24 the Designating Party may also designate any portion of a deposition transcript, at the  
25 deposition, or by informing the reporter and the Parties in writing of the applicable  
26 designations within thirty (30) calendar days of completion of the certified transcript. The  
27 entire transcript of a deposition at which OUTSIDE COUNSEL RESTRICTED – SOURCE  
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1 CODE Material was disclosed will be treated as OUTSIDE COUNSEL RESTRICTED –  
2 SOURCE CODE until the thirty-day period has expired. The entire transcript of all other  
3 depositions will be treated as OUTSIDE COUNSEL EYES ONLY until the thirty-day  
4 period has expired. Transcript pages identified by a Designating Party must be separately  
5 bound by the court reporter, who must affix to the top of each such page the legend  
6 “CONFIDENTIAL,” “OUTSIDE COUNSEL EYES ONLY,” or “OUTSIDE COUNSEL  
7 RESTRICTED – SOURCE CODE” as instructed by the Designating Party. Subject to the  
8 Court’s preferences, the parties will work together to make arrangements for making such  
9 designations to exhibits, testimony, and other Material used during hearings, pre-trial  
10 proceedings, and during the trial of this case.  
11

12 45. Non-Party Designations. A non-Party producing information or Material  
13 voluntarily or pursuant to a subpoena or court order may designate the information or  
14 Material in the same manner as a Party.  
15

16 46. Challenges to Designations.

- 17 (a) Written Notice. The Designating Party shall use reasonable care when  
18 designating Material as CONFIDENTIAL, OUTSIDE COUNSEL  
19 EYES ONLY, or OUTSIDE COUNSEL RESTRICTED – SOURCE  
20 CODE. Nothing in this Protective Order shall prevent a Receiving Party  
21 from contending that any Material has been improperly designated. If  
22 the Receiving Party disagrees with the designation of any Material, the  
23 Receiving Party may challenge such designation by providing the  
24 Designating Party with written notice of such challenge and by  
25 identifying the Material as specifically as possible. The challenge  
26 should be made as soon as is practicable following production, and  
27  
28

1 unreasonable delay may be considered a waiver of the challenge if the  
2 circumstances so warrant, although nothing in this provision should be  
3 interpreted as creating a presumption of waiver based on delay. If the  
4 parties do not resolve the dispute within thirty (30) days of the  
5 Designating Party receiving written notice of the challenge, the  
6 Receiving Party may file a motion with the Court challenging the  
7 designation as invalid as set forth below.  
8

9 (b) Meet and Confer. A Party that elects to challenge a designation must do  
10 so in good faith and, in addition to the written notice, must confer  
11 directly (in voice-to-voice dialogue; other forms of communication are  
12 not sufficient) with counsel for the Designating Party. In conferring, the  
13 challenging Party must explain the basis for its belief that the  
14 confidentiality designation was not proper, must give the Designating  
15 Party an opportunity to review the Material challenged and to reconsider  
16 the circumstances, and, if no change in designation is offered, to explain  
17 the basis for the chosen designation. A challenging Party may file a  
18 motion challenging the designation only if it has engaged in this meet-  
19 and-confer dialogue first. Each such motion must be accompanied by a  
20 competent declaration that affirms that the movant has complied with  
21 these meet-and-confer requirements and that sets forth with specificity  
22 the justification for the designation that was given by the Designating  
23 Party in the meet-and-confer dialogue.  
24

25  
26 (c) Judicial Intervention. The burden of persuasion in any such challenge  
27 proceeding shall be on the Designating Party. Until the Court rules on  
28

1 the challenge, all parties shall continue to afford the Material in question  
 2 the level of protection to which it is entitled under the Designating  
 3 Party's designation.

#### 4 **INADVERTENT PRODUCTION**

5 47. Failure to Designate. A failure to designate confidential Material does not  
 6 waive a Designating Party's right to secure protection under this Order for that Material. On  
 7 discovery of a failure to designate, a Designating Party may give written notice of the  
 8 designation and provide substitute copies of the Material bearing the appropriate legend.  
 9 The Receiving Party must then treat the Material in accordance with the new designation,  
 10 retrieve and destroy all copies of the previously produced version of the Material from  
 11 anyone who had received it, and destroy any electronic copies of the previously-produced  
 12 version.  
 13

#### 14 **MISCELLANEOUS**

15 48. Enforcement and Jurisdiction. This Court will have exclusive jurisdiction to  
 16 enforce this Order against the Parties and any individuals who execute Exhibits A and/or B  
 17 to this Protective Order, even following the final disposition of this action. Every individual  
 18 who reviews Designated Material also agrees to be subject to the jurisdiction of this Court  
 19 for the purpose of any proceedings related to the enforcement of this Order.  
 20

21 49. Injunctive Relief. Every individual who reviews Designated Material  
 22 acknowledges that a breach of this Order may result in immediate and irreparable injury for  
 23 which there is no adequate remedy at law. A party may immediately apply to obtain  
 24 temporary, preliminary, and permanent injunctive relief against a violation or threatened  
 25 violation of this Order.  
 26

27 50. Final Disposition. Within sixty (60) days after the final disposition of any action  
 28

1 between the parties, each Receiving Party must destroy or return to the Producing Party all  
2 Designated Material and submit a written confirmation of the return or destruction to the  
3 Producing Party (and, if not the same person or entity, to the Designating Party). However,  
4 Counsel of Record are entitled to retain one archival copy of all pleadings, motion papers  
5 and supporting materials, transcripts, legal memoranda, correspondence, briefs and  
6 supporting materials, written discovery requests and responses, exhibits offered or  
7 introduced into evidence at trial, or attorney work product. Any such archival copies remain  
8 subject to this Protective Order.  
9

10 51. Duration. The confidentiality obligations imposed by this Order will remain in  
11 effect even after the final disposition of this action, until and unless otherwise agreed to by  
12 the Designating Party or ordered by the Court.  
13

14 52. Further Protections. This Order is entered without prejudice to the right of any  
15 party to apply to the Court at any time for additional protection or to relax or rescind the  
16 restrictions of this Order.  
17

18 53. Subpoenas in Other Litigation. If a Receiving Party is served with a subpoena  
19 or a court order that would compel disclosure of any Designated Material, it must so notify  
20 the Producing Party (and, if not the same person or entity, the Designating Party), in writing  
21 (by hand delivery, fax, or email) promptly and in no event more than ten (10) days after  
22 receiving the subpoena or order. The notice must include a copy of the subpoena or order.  
23 The Receiving Party also must promptly inform in writing the party who caused the  
24 subpoena or order to issue that some or all of the requested material is subject to this Order.  
25

26 54. The Parties acknowledge and agree that the Court reserves the right to amend  
27 or alter the terms of the stipulation or order in the interest of justice and in the interest of a  
28 fair resolution of the matter.

Dated: March 17, 2021

**WEIDE & MILLER, LTD.**

/s/ F. Christopher Austin

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*Attorneys for  
Defendants iPGARD  
Inc. and SmartAVI Inc.*

IS SO ORDERED

Dated: March 18, 2021

  
United States Magistrate Judge

**Exhibit A**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

HIGH SEC LABS LTD.,

Plaintiff,

v.

IPGARD INC., and  
SMARTAVI INC.,

Defendants.

Case No. 2:20-cv-01797-MMD-NJK

**ACKNOWLEDGMENT AND AGREEMENT  
TO BE BOUND BY PROTECTIVE ORDER**

I, \_\_\_\_\_, state:

1. I reside at \_\_\_\_\_.
2. My present employer is \_\_\_\_\_.
3. My present occupation or job description is \_\_\_\_\_.
4. I have read the Protective Order ("Order") in Case No. 2:20-cv-01797-MMD-NJK (D. Nev.) and understand and will abide by its terms.
5. I will not use the Designated Material for any purpose other than the lawsuit, identified as 2:20-cv-01797-MMD-NJK (D. Nev.), or any other litigation pending between the parties.
6. I will not divulge any Designated Material to persons other than those specifically authorized by the Order. I will not use any Designated Material in any manner not expressly allowed by the Order.
7. I will destroy all copies of Designated Material at the conclusion of this litigation.
8. I agree to be subject to the authority of the United States District Court for the District of Nevada in the event of any dispute related to this agreement.
9. I state under penalty of perjury under the laws of the United States that the foregoing is true and correct.



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Executed on \_\_\_\_\_, 202\_\_.

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Signature.

**Exhibit B**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

HIGH SEC LABS LTD.,

Plaintiff,

v.

IPGARD INC., and  
SMARTAVI INC.,

Defendants.

Case No. 2:20-cv-01797-MMD-NJK

**CERTIFICATION OF OUTSIDE CONSULTANT  
REGARDING PROTECTIVE ORDER**

I, \_\_\_\_\_, state:

1. I have read the Protective Order (“Order”) in Case No. 2:20-cv-01797-MMD-NJK (D. Nev.) and understand and will abide by its terms.

2. I am not a current or anticipated officer, director, or employee of a Party or of a Party’s competitor, or a current or anticipated consultant involved in product and/or process design or development for a Party or for a Party’s competitor.

3. If at any time after I execute this Certification of Outside Consultant and during the pendency of the litigation I become an officer, director, or employee of a Party or of a Party’s competitor, or a consultant involved in product and/or process design or development for a Party or for a Party’s competitor, I will promptly inform the counsel for the Party who retained me in this litigation, and opposing counsel. I will inform all counsel of the name of the new company with which I become affiliated. I will not thereafter review any Designated Materials marked as “OUTSIDE COUNSEL EYES ONLY” or “OUTSIDE COUNSEL RESTRICTED - SOURCE CODE” unless and until the Parties agree or the Court orders otherwise, and I will destroy and delete all confidential material in my possession and confirm to opposing counsel that this has been done.

4. I will not use any Designated Material for any purpose other than this litigation, or any other litigation pending between the parties. Without limiting the

1 foregoing, I agree not to use any Designated Material for commercial hardware, software,  
2 or product development.

3 5. I will destroy all copies of Designated Material at the conclusion of this  
4 litigation.

5 6. I agree to be subject to the authority of the United States District Court for the  
6 District of Nevada in the event of any dispute related to this certification.

7 7. I state under penalty of perjury under the laws of the United States that the  
8 foregoing is true and correct.

9 Executed on \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
Signature.